

The Appeals Board hereby adopts for purposes of this appeal the stipulations listed in the January 7, 1994, Award of Administrative Law Judge Steven J. Howard.

ISSUES

Claimant appeals the decision by the Administrative Law Judge denying benefits on the grounds that claimant did not suffer an injury arising out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The Appeals Board agrees with and affirms the decision of the Administrative Law Judge finding that claimant has not established by preponderance of the credible evidence that he suffered an accidental injury arising out of and in the course of his employment.

Claimant alleges that he suffered accidental injury on December 2, 1992, while moving a big-screen television in the course of his employment with McDuff Electronics. He testifies that he told his co-worker of the injury at the time. There is, however, substantial, and the Board believes convincing, evidence that claimant injured his low back at home while lifting a tool box. Respondent has produced testimony from the store manager at McDuff Electronics who indicates that claimant called and told him he would be unable to work because he had injured his back lifting a tool box at home. The co-worker acknowledges assisting and moving a big-screen television but indicates claimant did not mention any back injury or give any indication by his behavior that he had injured his back. The records from the initial treating physician, Dr. John Romito, indicate the claimant's history indicated he had injured his back lifting a tool box. The information sheet of Dr. Romito's office includes a question asking whether the injury occurred at work. Claimant checked the box for "no."

The Appeals Board acknowledges there is evidence supporting claimant's allegations and testimony. Dr. Wilkinson, for example, based upon the history given by the claimant, testified that he believed the injury occurred from lifting the television at work. Although claimant had originally told Dr. Romito that he had injured himself lifting a tool box at home, claimant called in some ten days later and indicated he had been thinking about it and remembered an incident at work which he described as lifting an approximately six-hundred pound television.

This appeal requires a balancing and weighing of the evidence presented. After doing so, the Appeals Board concludes that claimant has failed to carry his burden of proving by preponderance of the credible evidence that his injury arose out of and in the course of his employment. Accordingly, the Appeals Board affirms the decision of the Administrative Law Judge denying benefits.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award, dated January 7, 1994, of Administrative Law Judge Steven J. Howard is hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: David R. Hills, Bank IV Bldg., 1314 N. 38th St., Kansas City, KS 66102
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Steven J. Howard, Administrative Law Judge
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